86-359

No. _____

Supreme Court, U.S.
FILED
SEP 3 1986
JOSEPH F. SPANIOL, JR.
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER 1986 TERM

ARISTIDES CASTRO GONZALEZ

APPELLANT

VS.

THE COMMONWEALTH OF PUERTO RICO
BANCO DE PONCE
CONTINENTAL CASUALTY OF PUERTO RICO
CNA CASUALTY OF PUERTO RICO

APPELLEES

ON APPEAL FROM THE SUPREME COURT
OF THE COMMONWEALTH OF PUERTO RICO

JURISDICTIONAL STATEMENT

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Attorney for petitioner

25pp

I QUESTION PRESENTED ON APPEAL

A real property is to be sold at public auction. The owner is not notified of the sale, it's date, time or place, and the law of Puerto Rico does not require such notification. The owner contends that the lack of notification deprived him of his property in violation of his constitutional right to due process of law. The Commonwealth of Puerto Rico and the buyer of the property contend that the public auction was conducted according to the laws of Puerto Rico; that the personal non-notification to the owner of the pending sale and the lack of a legal requirement for personal notification do not violate the right to due process.

The question here presented is whether the law of the Commonwealth of Puerto Rico which governs the sale of real property at public auction is in violation of the Constitution of the United States.

II PARTIES

All the parties to the proceeding in court are named in the case caption.

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Commonwealth of Puerto Rico
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Cases, Constitutional Provisions and Statutes

1. Mennonite Board of Missions vs. Richard C. Adams
   103 S Ct 2706, 462 US 791, 77 L Ed 2° 180, (1983)
2. United States Constitution 5° Amendment
3. Rules of Civil Procedure for the General Court of Justice, Appendix III of Title 32 of the Laws of Puerto Rico, 1979.

V REFERENCE TO OPINIONS IN COURTS BELOW

This case was originally heard in the Superior Court of Puerto Rico, San Juan, in Case No. 85-5544. By Judgement 14 March 1986 the Court dismissed the complaint in that case. On 3 April 1986 the same Court denied

Reconsideration on the specific constitutional issue of due process.

On 16 April 1986, petitioner filed a Petition for Revision before the Supreme Court of the Commonwealth of Puerto Rico, Case No. RE-86-182.

On 8 May 1986 the Supreme Court of Puerto Rico dismissed the Petition for Revision.

On 5 June 1986 the Supreme Court of Puerto Rico denied a Motion for Reconsideration on the specific constitutional issue.

VI GROUNDS FOR JURISDICTION

In this case appellant Aristides Castro Gonzalez challenges the validity of the sale of his property at public auction, contending that by not requiring that he be notified of the impending sale, the state marshall in conducting the public auction violated appellant's right to due process of law.

BEST

The Supreme Court of Puerto Rico denied appellant's claim of 16 April 1986 on 8 May 1986, Reconsideration denied on 5 June 1986. This is a final decision by the Supreme Court of Puerto Rico denying a claim that a specific law of Puerto Rico contains a provision repugnant to the Constitution of the United States. The Supreme Court of the United States has jurisdiction to hear this case on direct appeal under 28 USC 1258.

VII CONSTITUTIONAL PROVISIONS AND STATUTES

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual Service in time of War or public danger; now shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty of property, without due process of law; nor shall private property be taken for public

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use, without just compensation.
5° Amendment to the Constitution of the United States.

Rule 51.8 Judicial Sales (a) Notice of sale. Before the sale of a property on execution is held, notice thereof shall be published during two (2) weeks by posting written notice in three public places of the municipality where the sale is to be held, such as the city hall, the court and the collector's office. Said notice shall be posted also at the collector's office and at the public school of the place where defendant has his residence, if it is known, or in one of the newspapers of general circulation in the Commonwealth of PUerto Rico, during two (2) weeks, and at least once a week. The notice of sale shall adequately describe the property on sale, indicating the place, day and time when the sale is to be held. If the property is perishable the court may, on motion of party, reduce the term for posting the notice of sale to less than two (2) weeks. All judicial sales which do not comply with the notice of sale requirement shall be null, without prejudice to the liability of the party who made the sale without complying with said notice.
Rules of Civil Procedure, Proceedings after Judgement, Title 32, Laws of the Commonwealth of Puerto Rico

VIII STATEMENT OF THE CASE

Since 1967, plaintiff/appellant Aristides Castro Gonzalez has owned development land in Cupey Alto, Puerto Rico of approximately 3.4 acres.

In 1980 Castro filed suit in Puerto Rico Superior Court against the Puerto Rico Public Building Authority for damages to him caused by the Authority in a contract controversy; Castro builds schools on contract. In 1984, the Court awarded to Castro $39,000 in judgement to Castro in his favor and against the Authority.

Almost immediately, Continental Casualty of Puerto Rico (Continental) filed a claim on the $39,000 award, asking the whole amount in partial satisfaction of a judgement they had against Castro and in favor of Continental for a 1978 case of construction financing where Continental held a bond for Castro.

In discussing the claim with Continental and its affiliate, CNA Casualty of Puerto Rico (CNA), Castro learned for the first time, December 1984, that his land in Cupey Alto had been sold at public auction to these same insurance companies who had held his policies, in October 1980.

In February 1985, Castro filed in the Public Building Authority case a motion to nullify the public sale of his land claiming that the State and the insurance companies had violated due process.

The Court decided that "...this is not the proper forum to judge any defect...in the public Auction." 22 May 1985.

Castro then filed the root case of this appeal, Case 85-5544, in Puerto Rico Superior Court against the same defendants - the Commonwealth of Puerto Rico, Banco de Ponce, Continental Casualty of Puerto Rico and CNA Casualty of Puerto Rico - asking the Court

to declare null the sale of his land at Public Auction because he, the owner, was not notified of the pending sale and that this lack of personal notification violated his contitutional right to due process of law.

Superior Court dismissed this claim in March 1986 on the basis that the sale of land at public auction in Puerto Rico is governed by Rule 51 of the Puerto Rico Rules of Civil Procedure, that Rule 51 does not require personal notification and that his claim of nullity of sale was therefore without merit.

Castro filed reconsideration on 31 March 1986, pointing out that the cited jurisprudence, Mennonite Board of Missions vs. Adams, 103 S Ct 2706, required personal notification. Superior Court denied this motion of reconsideration.

Castro filed a Petition for Revision of the Superior Court decision with the Supreme Court of the Commonwealth of Puerto Rico, Case NO. RE-86-192. This Petition was denied by the Supreme Court on 8 May 1986. Castro filed for reconsideration, pointing out that the standard for notification set out in Mennonite Mission Board, supra, must be met, that Rule 51 did not comply with that standard to that extent, thus Rule 51 must be declared unconstitutional because it is in violation of both the Puerto Rico and United States Constitutions. Reconsideration was denied by the Supreme Court of Puerto Rico on 5 June 1986.

Notice of Appeal was filed with the Supreme Court of Puerto Rico on 22 August 1986 and all parties were served with this notice.

IX STATEMENT OF REASONS TO BE HEARD

This case treats of severe economic damage, of deprivation of property, in violation of determined standards of due process of law. Not only has the appellant been deprived of property, he is adjudged to have no recourse in law because the law of Puerto Rico does not require that the constitutional standard be met; the law of Puerto Rico that sets notification standards for the sale of land at public auction does not require personal notification, and that's that.

Constitutional rights must be the same for all citizens, no state laws can alter these rights. In this case the law of Puerto Rico denies a right that the United States Supreme Court has decided must be upheld. Equal justice for all the citizens of Puerto Rico demands that this controversy over a fundamental right be aired before and decided by the Supreme Court of the United States.

This Jurisdictional Statement is most respectfully submitted today, the 2° day of September 1986 from San Juan, Puerto Rico.

Robert J. Walser
attorney for the appellant
GPO Box AL
San Juan, Puerto Rico
00936
(809)722-0111

Certificate of Service I, Robert J. Walser, attorney for the appellant, certify that I have today sent by first class pre-paid mail three copies each of this Jurisdictional Statement to the counsel of record of each party, as follows:

Laura Ydrach Vivona
Apt. 192
San Juan, PR 00902
(representing Puerto Rico)

Alex Gonzalez
Edif. Banco de Ponce
Hato Rey, PR 00918
(representing CNA and Continental)

Luis Dubon III
Banco de Ponce
Hato Rey, PR 00918
(representing Banco de Ponce)

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IN THE SUPREME COURT OF PUERTO RICO

Aristides Castro Gonzalez
Plaintiff/Appellant

vs

Case No.

Commonwealth of Puerto Rico, et al
Defendants/Appellees

RE-86-182

RESOLUTION

To this solicitation for revision, DENIED

Thus decided the Court, certified by the Secretary, Interim.

(signed)
Heriberto Perez-Ruiz
Secretary Interim

San Juan, Puerto Rico, 8 May 1986

IN THE SUPREME COURT OF PUERTO RICO

Aristides Castro Gonzalez
Plaintiff/Appellant

vs

Case No.
RE-86-182

Commonwealth of Puerto Rico,
et al
Defendants/Appellees

RESOLUTION

San Juan, Puerto Rico, 5 June 1986

As to the Motion for Reconsideration, DENIED.

Thus Decided the Court, certified by the Secretary General, interim. Justice Mr. Rebollo Lopez would reconsider.

(signed)
Heriberto Perez-Ruiz
Secretary General,
Interim

IN THE SUPERIOR COURT OF PUERTO RICO
COURTROOM OF SAN JUAN

Aristides Castro Gonzalez Plaintiff	*	
vs.	*	CIVIL NO.
Commonwealth of Puerto Rico Banco de Ponce CNA of Puerto Rico, Inc. Continental Casualty of Puerto Rico, Inc. Defendants	*	85-5544(905)

* * * * * * * * * * * * * * *

JUDGEMENT

This case concerns a civil complaint filed by Aristides Castro Gonzalez, engineer, against various parties, where it is alleged in essence that the ordinary procédure to execute judgement by means of the sale at public auction of a plot of land containing 13,329 meters, located in Cupey Alto, Puerto Rico, that was the property of Engineer Castro Gonzalez. He claims that the sale in public auction is mull because allegedly he was not served personally with the notice of aucution and that, in his

opinion, infringes on due process of law. Answering the complaint by all the parties, The Commonwealth of Puerto Rico filed a Motion for Dismissal and the court scheduled the same for hearing, together with the affirmative defenses raised by the other parties in their respective answers to the Complaint that it does not present a cause of action.

At the hearing the parties appeared properly represented and argued in support of their respective contentions. The court has analyzed carefully the parties and concluded that there has not been such failure to comply and for this reason dismisses the complaint with regard to all of the parties.

We see as follows:

Engineer Aristides Castro Gonzalez and his wife were properly served in the three litigation that gave rise to the judge-

ments against them, to wit, 77-2028(807) CNA Casualty of Puerto Rico vs. Aristides Castro Gonzalez and others; 78-5380(807) Banco de Ponce vs Aristides Castro Gonzalez and his wife Aidee Piniero de Castro; 77-2063(807) Continental Casualty Co. vs Aristides Castro Gonzalez and others. In all of these cases appeared in representation of the defendants Attorney Raul Bocanega Saldana (may he rest in peace). Each of these cases produced a judgement in favor of the plaintiff and against the defendants, who were notified by the present plaintiff through attorney Raul Bocamegra Saldana after the filing officialy of the same.

To execute the judgement, Rule 51 of Civil Procedure was followed, publishing notices in the newspaper El Dia on 25 September and 2 October of 1980 repsectfully, according to the certification in the record

done by Carmen M. Hernandez, under affidavit No. 26934 of October 2, 1980. In the same manner, notices of the auction were posted in public places such as the tax offices of Rio Piedras, the municipality of Rio Piedras, the judicial center of Hato Rey and the city hall of San Juan on 30 September 1980, according to a sworn statement by Mr. Lorenzo Sanchez in affidavit no. 1379 of October 19, 1980 before public notary Luis M. Angelet Frau.

On October 3, 1980, attorney Angel Alvarez Perez sent a letter under receipt no. 8799239 to attorney Raul Bocanegra Saldana, where there was included a copy of the notice of auction to be carried out in execution of the judgement over the property before indicated.

Having complied with Rule 51 over execution, and specifically with Rule 51.8 over judicial sales, the court concludes that there does

not exist a reason to decree the nullity of the sale at public auction of the real property to which we have referred before, and there we must declare the case as presented to be dismissed.

The court has had the opportunity to examine the case cited by the legal representative of the plaintiff, Mennonite Board of Missions vs. adams, (1983) 103 S Ct 2706, and has resolved that it does not apply to the case under consideration. In the cited case we have an action under a specific law of the State of Indiana over the procedure to collect back taxes in accordance with the procedure to sell at public auction the property in question without giving notice to a mortgage holder with a legitimate interest that was properly registered.

To the contrary, the procedure impugned in this case is governed by the Rules of Civil Procedure and the defendant faithfully complied with the same.

The Court concludes that even considering most liberally in it's analysis and consideration of the arguments of the plaintiff, that the plaintiff is not able, in any manner, to perservere in his claim and that conforming to Figueroa Pineiro vs Mimida and Kguia (1961) 83 DPR 554, the complaint must be dismissed.

Conforming to this the Court dictates the following:

JUDGEMENT

Conforming to the facts of this case and the law and jurisprudence applicable, the Court declares the complaint WITHOUT MERIT, decreeing the dismissal of the same, with the imposition of cost of $500 for attorney's fees to satsify each of the parties defendant except for the Commonwealth of Puerto Rico.

REGISTERED AND NOTIFIED

GIVEN in San Juan, Puerto Rico on the 14th day of March 1986

(signed)
NELLIE ORTIZ TORRES
SUPERIOR JUDGE

IN THE SUPREME COURT OF THE COMMONWEALTH
OF PUERTO RICO

ARISTIDES CASTRO GONZALEZ Plaintiff/Apppellant	
vs.	Case NO.
COMMONWEALTH OF PUERTO RICO BANCO DE PONCE CNA OF PUERTO RICO, INC. CONTINENTAL CASUALTY OF PUERTO RICO	RE-86-192
Defendants/Appellees	

NOTICE OF APPEAL

TO THE HONORABLE COURT

comes the plaintiff/appellant in the captioned case, Aristides Castro Gonzalez, and notifies the Honorable Supreme Court of the Commonwealth of PUerto Rico of his appeal to the Supreme Court of the United States from the judgement of 8th May 1986 denying the petition for revision, and the judgement of 5 June 1986 denying the special reconsideration as to constitutionality of the law that specifies the disputed

procedure for public auction of real property.

This appeal is taken under 28 USC 1258(2).

Respectfully submitted this 22nd day of August 1986 in San Juan, PUerto Rico.

Robert J. Walser
attorney for appellant
GPO Box AL
San Juan, Puerto Rico
00936
(809)722-0111

I certify that a copy of this notice of this notice of appeal has been sent by first class pre-paid mail to:Attorneys Laura Ydrach Vivoni, Apt. 192, San Juan Puerto Rico 00902 (representing the Commonwealth of Puerto Rico), Alex Gonzalez, Edif. Banco de Ponce 1901, Hato Rey, PR 00918 (representing CNA of Puerto Rico, Inc., and Continental Casualty of Puerto Rico, Inc.) and Luis Dubon III, Banco de Ponce Hato Rey, PR 00918 (representing Banco de Ponce.)

(signed)

Robert J. Walser

(2)

Supreme Court, U.S.
FILED
DEC 16 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 86-359

SUPREME COURT OF THE UNITED STATES

OCTOBER 1986 TERM

ARISTIDES CASTRO GONZALEZ

APPELLANT

VS.

THE COMMONWEALTH OF PUERTO RICO;
BANCO DE PONCE;
CONTINENTAL CASUALTY COMPANY; and
CNA CASUALTY OF PUERTO RICO

APPELLEES

ON APPEAL FROM THE SUPREME COURT
OF THE COMMONWEALTH OF PUERTO RICO

MOTION TO DISMISS

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25P

TO THE HONORABLE SUPREME COURT
OF THE UNITED STATES OF AMERICA:

NOW APPEAR CONTINENTAL CASUALTY COMPANY, CNA CASUALTY OF PUERTO RICO and BANCO DE PONCE, represented by their undersigned attorneys and respectfully plead as follows:

On the 3rd day of September 1986 the Supreme Court of the United States docketed the above-captioned case on the basis of an appeal from a determination of the Supreme Court of the Commonwealth of Puerto Rico. The matter stems from an execution of mortgage and judgment which concluded in a public sale of the subject property, all in compliance with the provisions of Rule 51 of the Puerto Rico Rules of Civil Procedure for such execution and sale and specifically Rule 51.8(a) which reads as follows:

> "(a) Notice of Sale. Before the sale of the property on execution is held, notice thereof shall be published

> during two (2) weeks by posting written notice in three public places of the municipality where the sale is to be held, such as the city hall, the court and the collector's office. Said notice shall be posted also at the collector's office and at the public school of the place where defendant has his residence, if it is known, or in one of the newspapers of general circulation in the Commonwealth of Puerto Rico, during two (2) weeks, and at least once a week. The notice of sale shall adequately describe the property on sale, and shall also mention the judgment to be satisfied through said sale, indicating the place, day and time when the sale is to be held."

It is not the contention of appellant Engineer Arístides Castro González that the appellees failed to comply with the provisions of the local rules. It is, however, the contention of Engineer Arístides Castro González, herein appellant, that the Puerto Rican statute, in not requiring a personal notification to the defendant-debtor in the public sale phase proceedings, constitutes a violation of his constitutional right to due

process of law and further constitutes an undue taking of the appellant's property, all in violation of the Constitution of the United States of America and its Fourteenth Amendment.

Because this is the sole contention of the appellant we would not burden this Court with a review of all facts leading to the public sale which were in strict compliance with the Puerto Rican statute and particularly Rule 51.8(a) Notice of Sale. In order for the Court to have a clear view of the entire situation, however, we shall briefly relate the facts as follows:

Appellant Arístides Castro González and his wife Haydée Piñeiro were owners of the property located at Cupey Alto Ward, Río Piedras, Puerto Rico, onto which they voluntarily executed a mortgage in favor of Banco

de Ponce for the principal sum of $20,000.00 plus $11,162.91 of accumulated interest at the rate of $9.86 per day. They also executed another mortgage over the same property and in favor of CNA Casualty of Puerto Rico in the amount of $162,000.00 on 31 May 1976 pursuant to public deed number 3 before Notary Public Francisco J. Cobián Guzmán.

On 31 August, 1978 Banco de Ponce filed an action to execute on the basis of a complete total non-payment by the appellant. The couple was served personally on 12 September 1978. Because they failed to make an appearance, at the request of appellee Banco de Ponce, default was entered on 28 December 1978.

Subsequently the Court allowed the appellants to appear represented by their counsel Raúl Bocanegra Saldaña, Esquire, with

a motion for summary judgment. After argument this motion was denied and the case was scheduled for trial on its merits on 13 February 1979.

Both parties appeared at the hearing represented by their respective counsel.

After the presentation of evidence the Superior Court of San Juan entered judgment on 20 February 1979, which was notified to all parties on 2 March of the same year through their attorneys at their respective address of record.

In the meantime CNA Casualty of Puerto Rico, surety for Arístides Castro González in his contracts with the Public Building Administration for the construction of several schools and who was obliged to complete said schools after his default, had also obtained a judgment before the Superior Court of San

Juan on 16 November 1979 in execution of a mortgage voluntarily given by Arístides Castro González and his wife Haydée Piñeiro. On 20 October 1980 CNA Casualty of Puerto Rico acquired the rights from Banco de Ponce by satisfaction of the total judgment for the first mortgage in favor of said bank. After the Court approved the acquisition of the Bank's interest by CNA Casualty of Puerto Rico, the process of execution continued having Superior Court Marshall Ferdinand Rodríguez Molina issued a notice of public sale on 12 September 1980 to be published in a newspaper of general circulation in the Commonwealth of Puerto Rico, once a week, for two consecutive weeks, and to be placed in the customary public locations. The notices were published in the newspaper "El Nuevo Día" on the days 25 September and 2 October,

both in 1980. In addition to that, the notices were placed in the Judicial Center of San Juan located in Hato Rey, Puerto Rico; in the collection center for internal review for the Municipality of Río Piedras, in Río Piedras, Puerto Rico, and in City Hall for the Municipality of San Juan, all commencing on 30 September 1980.

These locations are the customary ones to be used in satisfaction of the provisions of Rule 51.

In addition to the above, and further to the provisions of Rule 51, appearing counsel forwarded Arístides Castro González and his wife a copy of the notice of public sale that had been authorized by Superior Court Marshall Ferdinand Rodríguez Molina to their attorney Raúl Bocanegra Saldaña, Esquire, at

his address by certified mail requesting a return receipt.

At the expiration of the days provided by Rule 51, the public sale was held according to the notices of public sale at 10:30 A.M. on 21 October 1980 in the offices of the Marshall for the Superior Court of San Juan located in the Judicial Center, Hato Rey, Puerto Rico.

Pursuant to the aforementioned documents the property was adjudicated to CNA Casualty of Puerto Rico in the absence of any other bidder.

Arístides Castro González and his wife failed to appear.

The present action was filed at 2:31 P.M. before the Superior Court of San Juan on 29 October 1985.

It should be emphasized here that the appellees, in addition to complying with all of the provisions of Rule 51, went on further as indicated above and by letter executed by Angel Alvarez Pérez, Esq., as counsel for co-defendant Banco de Ponce, notified Raúl Bocanegra Saldaña (since deceased), and during the execution and public sale proceedings counsel for appellant Engineer Arístides Castro González, by letter of 3 October 1980, certified with return receipt requested, a copy of the public notice for sale wherein Ferdinand Rodríguez Molina, Marshall for the Superior Court of San Juan, advised that pursuant to an Order of Execution of Judgment, he would sell at a public auction to the highest bidder the property subject of this matter on 21 October 1980 at 10:30 A.M. at his offices in the Judicial Center located at

Muñoz Rivera Avenue corner of Toll y Toste Street, Hato Rey, Puerto Rico.

This notice further described in detail the property to be so auctioned.

According to the Civil Procedure Rules for the Commonwealth of Puerto Rico, when a party is represented by counsel, notification to counsel will constitute notification to the party.

"Rule 9. Signatures on Documents.

> All document of a party represented by counsel shall be signed by at least one attorney of record with his own name, indicating his address and telephone. A party not represented by counsel shall sign his document and shall express his address and telephone, if he has one. The attorney or the party must notify immediately the Court, under the caption of the case, of any change in the address or telephone, except where specifically indicated to the contrary, by Rule or by law, and it shall not be necessary to execute under oath any document and need not be accompanied by a sworn statement. The signature of an attorney is equivalent to certifying the having

> read the document; that according to his better judgment, information and belief, it is well founded; and that it has not been filed to cause delay or oppression. If a writing were not signed, or was signed for the purpose of frustrating the objectives of the rules, it may be eliminated as pretentious and false, and the case may continue as if it had not been notified. The voluntary violation of this rule by an attorney will cause an imposition of sanctions against him. Like action will be taken if defamatory or improper material is introduced or if offensive and crude language is utilized."

The Puerto Rico Supreme Court in In Re: Carlos Silverio Orta, 86 JTS 18 (1986) held that once an attorney signs and files a complaint, he assumes the responsibility of carrying out the legal representation with the highest possible levels of diligence and competence. Said responsibility, added the Court, shall continue until the Court relieves counsel of the same by accepting his resignation as attorney of record. See In Re: Carlos Silverio Orta at p. 4223. The

Court also stated in case that the Motion to Withdraw Legal Representation is a request that must offer reasons which would enable the Court to grant counsel's petition.

The Puerto Rican Supreme Court clearly established in the above case that so long as the Court does not allow counsel to withdraw as attorney of record, he must continue to carry out his professional responsibility.

Rule 67 of the Puerto Rican Rules of Civil Procedure (PRRCP) deals with notice and notification of motions. In its relevant section, Rule 67.2 states:

> "67.2 Service; how made
>
> Whenever a party has appeared represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the Court. Service upon the attorney ... shall be made by delivering a copy to him or by mailing it to him at his last known address ... Service by mail is complete upon mailing.

Mr. Raúl Bocanegra Saldaña, Esq., was not relieved by the Court of his professional responsibility to the appellant, and therefore, at the time notice was forwarded to his attention he was Appellant Arístides Castro Gozález's attorney of record. As such Arístides Castro González was deemed by law to have been personally advised of the public sale.

In light of PRRCP 67.2 and of the fact that Mr. Raúl Bocanegra Saldaña, Esq. was still the attorney of record at the time notice was given, appellant's argument regarding lack of notice is ill founded. Appellant's contention that appellees did not know whether Mr. Raúl Bocanegra Saldaña was alive when notice of the public sale was given him is also without merit, as the Puerto Rico Bar Association's records indicate that brother

Raúl Bocanegra Saldaña (RIP) passed away on February 22, 1985, that is, almost five (5) years after notice was given him of the public sale.

In its jurisdictional statement, appellant cites Mennonite Board of Missions vs. Richard Adams, 462 US 791, 77 L.Ed. 2d 180 (1983) as the leading case in matters of notice. Mennonite holds that the publication and placing in public sites of the public sale edicts is not sufficient notice to a mortgagee of a judicial sale, under the due process clause of the Fourteenth Amendment of the Constitution of the United States.

It first should be noted the clear distinctions between Mennonite and the present case.

The matter of Mennonite Board of Missions vs. Richard Adams, supra, referred to a

mortgagee's right to be advised of the sale of the mortgaged property. In the matter of caption it is the owner who is alleging the unconstitutionality of the provisions of Rule 51.8(a) of the Rules of Civil Procedure for the Commonwealth of Puerto Rico in its requirement for notice of a public sale.

It should also be noted that in the present case it is the mortgagee who has commenced the process of execution which culminates in the public sale of the mortgaged property.

In the matter of Mennonite the action was taken pursuant to a state statute allowing for the sale of property to obtain satisfaction for non-payment of taxes to the state of Indiana, which required the county auditor to post notice in the county courthouse of the sale of said property and to

publish notice once each week for three consecutive weeks. It further called upon the auditor to notify the property owner by certified mail, but the statute had no provisions to notify by mail or personal service to any known mortgagee of the property.

Such a situation is totally different to the situation in the present action where the provisions of Rule 51.8(a) clearly establish how the owner-debtor-mortgagor is to be notified of a public sale.

It has been abundantly made clear that the appellees complied with each and every such provision.

The United States Supreme Court stated in Mennonite that the analysis to be used would follow the analysis of Mullane v. Central Hanover Bank & Trust, 339 US 306, 94 L.Ed. 865 (1950).

It stated in Mullane, supra:

> "the court recognized that prior to an action which will affect an interest in life, liberty or property protected by the Due Process Clause of the Fourteenth Amendment, a state must provide notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

Under all the circumstances of the situation before us, the notice given to appellant was one reasonably calculated to apprise him of the impending public sale of his property. As set forth above; appellants were personally served; they appeared with counsel; their counsel filed a motion for summary judgment which was denied; trial was held and judgment was notified to their counsel; the public sale edicts were published and placed in the public places as required by the law and, in addition to all of the above, appellants' counsel was notified by

certified mail of the pending sale in public auction, eighteen days prior to the date of sale.

Undoubtedly, these notices were more than sufficient and reasonable under all the circumstances of the case, to apprise appellants of the foreclosure on the mortgage of their home and the impending public sale of same.

In Nelson vs. New York, 352 US 103, L.Ed. 2d 171 (1956), the Supreme Court of the United States held:

> "... that the foreclosure by default judgment and subsequent sale of the property did not file due process where, in compliance with the statute, not only were notices of the foreclosure proceeding posted and published but also copies of the published notices were mailed to the last-known address of the trustees, even though the mailed notices of the foreclosure proceedings were concealed by the trustees' bookkeeper, who received them."

The circumstances in Nelson are very similar to the case before us. As in the case at bar, in Nelson, all requisites set out by the law were complied with and in addition to, the trustees were notified by mail to their last known address. Said notices, which were the same as that given to appellant Arístides Castro González, did not violate the due process clause as interpreted and decided by the Supreme Court of the United States.

The notices given to appellant Arístides Castro González in the case at hand were more numerous and extensive than those given the trustees in Nelson.

In Figueroa vs. Banco de San Juan, 108 DPR 680, 690 (1979), the Puerto Rican Supreme Court held that "in regard to the foreclosure procedure, the law does not require personal

notice to the property owner after judgment is obtained." Figueroa further held that "it is proper to assume that all litigants know the consequences of a judgment against them, and therefore ... should know that the judgment would be executed against the mortgaged property in the note they pledged." Figueroa, supra, p. 690. It further cited Albaladejo vs. Vilella Suau, 106, DPR 331 (1977) and Avilés Vega vs. Torres, 97 DPR 144 (1969).

The Superior Court of San Juan and its chamber presided by Superior Court Judge Nellie Ortiz Torres determined, in entering judgment against the appellant and in favor of the appellees, that the matter for determination was governed by Rule 51.8(a) Judicial Sales of the Rules for Civil

Procedure for the Commonwealth of Puerto Rico.

As is evident from the facts of this case, appellees complied with all the requisites of Rule 51.8(a). In addition to complying with the Rule appellees' legal counsel notified Mr. Arístides Castro's counsel, via certified mail, the date, time and place of the public auction. See Exhibit "F".

Appellant maintains in his jurisdictional statement before this Court that the additional notice sent by certified mail to its counsel is not sufficient under the due process clause of the Fourteenth Amendment. The allegation is based on appellant's contention that there was no guarantee said notice was received by the person with the endangered right, and further

alleges that appellees did not know if the attorney-client relationship was in effect or even if the attorney was alive at the time.

The record reflects that on the date the trial court notified judgment, to wit, March 2, 1979, and at the time the additional notice of the public sale was mailed to Raúl Bocanegra Saldaña, esq., he was still Mr. Arístides Castro González's attorney of record. Mr. Raúl Bocanegra Saldaña, Esq., never filed a motion to withdraw legal representation and not having been relieved of his responsibilities by the Court, he remained as Mr. Arístides Castro González's attorney of record.

WHEREFORE, all in harmony with the above, the appellees respectfully request the Supreme Court of the United States of America to deny the issuance of the writ sought by

appellant and enter an order dismissing the appeal as failing to show that Rule 51.8(a) of the Rules for Civil Procedure for the Commonwealth of Puerto Rico violates the provisions of the Fourteenth Amendment and its due process requirements.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 10 day of December, 1986.

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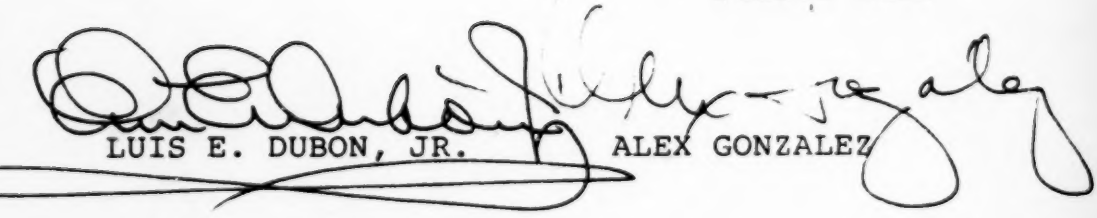

LUIS E. DUBON, JR. ALEX GONZALEZ

WE HEREBY CERTIFY: That a true and exact copy has been sent by first class pre-paid mail to Attorneys Robert J. Walser, Esq., G.P.O. Box AL, San Juan, Puerto Rico, 00936 (representing appellant); and Laura Ydrach Vivoni, Apt. 192, San Juan, Puerto Rico, 00902 (representing the Commonwealth of Puerto Rico).

LUIS E. DUBON, JR. ALEX GONZALEZ